

“was imposed for an offense for which no sentencing guideline has been issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1) and is plainly unreasonable or greater than the sentence specified in a plea agreement under Rule 11(e)(1)(B) or (e)(1)(C) of the Federal Rules of Criminal Procedure.”

Subsec. (b). Pub. L. 100-690, §7103(a)(5), inserted “, with the personal approval of the Attorney General or the Solicitor General.” after “The Government” in introductory provisions, and struck out concluding provisions which read as follows: “and the Attorney General or the Solicitor General personally approves the filing of the notice of appeal.”

Subsec. (b)(2). Pub. L. 100-690, §7103(a)(1), struck out “issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)” after “guidelines”.

Subsec. (b)(3). Pub. L. 100-690, §7103(a)(3), added par. (3) and struck out former par. (3) which read as follows: “was imposed for an offense for which a sentencing guideline has been issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1), and the sentence is less than—

“(A) the sentence specified in the applicable guideline to the extent that the sentence includes a lesser fine or term of imprisonment or term of supervised release than the minimum established in the guideline, or includes a less limiting condition of probation or supervised release under section 3563(b)(6) or (b)(11) than the minimum established in the guideline; and

“(B) the sentence specified in a plea agreement, if any, under Rule 11(e)(1)(B) or (e)(1)(C) of the Federal Rules of Criminal Procedure; or”.

Subsec. (b)(4). Pub. L. 100-690, §7103(a)(5)(A), added par. (4) and struck out former par. (4) which read as follows: “was imposed for an offense for which no sentencing guideline has been issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1) and is plainly unreasonable or less than the sentence specified in a plea agreement under Rule 11(e)(1)(B) or (e)(1)(C) of the Federal Rules of Criminal Procedure;”.

Subsec. (c). Pub. L. 100-690, §7103(a)(8), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 100-690, §7103(a)(8), redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Pub. L. 100-690, §7103(a)(6), (7), substituted “applicable guideline range” for “range of the applicable sentencing guideline” in par. (3) and inserted “and shall give due deference to the district court’s application of the guidelines to the facts” after “are clearly erroneous” in concluding provisions.

Subsec. (e). Pub. L. 100-690, §7103(a)(8), redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (e)(2). Pub. L. 100-690, §7103(a)(6), substituted “applicable guideline range” for “range of the applicable sentencing guideline”.

Subsecs. (f), (g). Pub. L. 100-690, §7103(a)(8), redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

Subsec. (h). Pub. L. 100-690, §7103(a)(9), added subsec. (h).

1987—Subsec. (a)(4). Pub. L. 100-182, §5(1), substituted “and is plainly unreasonable or greater than the sentence specified in a plea agreement under” for “and is greater than the sentence specified in a plea agreement, if any, under”.

Subsec. (b)(4). Pub. L. 100-182, §5(2), substituted “and is plainly unreasonable or less than the sentence specified in a plea agreement under” for “and is less than the sentence specified in a plea agreement, if any, under”.

Subsec. (d)(4). Pub. L. 100-182, §5(3), added par. (4).

Subsec. (e)(2). Pub. L. 100-182, §5(4), inserted “or was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable” in introductory provisions.

Subsec. (e)(2)(A), (B). Pub. L. 100-182, §5(5), substituted “and” for “the court shall” before “remand”.

Subsec. (e)(3). Pub. L. 100-182, §6, amended par. (3) generally. Prior to amendment, par. (3) read as follows: “was not imposed in violation of law or imposed as a result of an incorrect application of the sentencing guidelines, and is not unreasonable, it shall affirm the sentence.”

Subsec. (f). Pub. L. 100-182, §4, added subsec. (f).

1986—Subsec. (e)(1). Pub. L. 99-646, §73(a)(1), substituted provision directing the court to remand the case for further sentencing proceedings with such instructions as the court considers appropriate, for provision directing the court to remand the case for further sentencing proceedings or correct the sentence.

Subsec. (e)(2)(A). Pub. L. 99-646, §73(a)(2), substituted provision directing the court to remand the case for further sentencing proceedings with such instructions as the court considers appropriate for provision directing the court to remand the case for imposition of a lesser sentence, remand the case for further sentencing proceedings, or impose a lesser sentence.

Subsec. (e)(2)(B). Pub. L. 99-646, §73(a)(2), substituted provision directing the court to remand the case for further sentencing proceedings with such instructions as the court considers appropriate, for provision directing the court to remand the case for imposition of a greater sentence, remand the case for further sentencing proceedings, or impose a greater sentence.

CHANGE OF NAME

Words “Magistrate Judge” and “United States magistrate judge” substituted for “Magistrate” and “United States magistrate”, respectively, in subsec. (g) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-182 applicable with respect to offenses committed after Dec. 7, 1987, see section 26 of Pub. L. 100-182, set out as a note under section 3006A of this title.

EFFECTIVE DATE

Section effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this section, see section 235(a)(1) of Pub. L. 98-473, set out as a note under section 3551 of this title.

CHAPTER 237—CRIME VICTIMS’ RIGHTS

Sec.

3771. Crime victims’ rights.

PRIOR PROVISIONS

A prior chapter 237, consisting of sections 3771 and 3772, related to criminal procedure, prior to repeal by Pub. L. 100-702, title IV, §§404(a), 407, Nov. 19, 1988, 102 Stat. 4651, 4652, effective Dec. 1, 1988. See sections 2071 to 2074 of Title 28, Judiciary and Judicial Procedure.

§ 3771. Crime victims’ rights

(a) RIGHTS OF CRIME VICTIMS.—A crime victim has the following rights:

(1) The right to be reasonably protected from the accused.

(2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.

(3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.

(4) The right to be reasonably heard at any public proceeding in the district court involv-

ing release, plea, sentencing, or any parole proceeding.

(5) The reasonable right to confer with the attorney for the Government in the case.

(6) The right to full and timely restitution as provided in law.

(7) The right to proceedings free from unreasonable delay.

(8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

(9) The right to be informed in a timely manner of any plea bargain or deferred prosecution agreement.

(10) The right to be informed of the rights under this section and the services described in section 503(c) of the Victims' Rights and Restitution Act of 1990 (42 U.S.C. 10607(c)) and provided contact information for the Office of the Victims' Rights Ombudsman of the Department of Justice.

(b) RIGHTS AFFORDED.—

(1) IN GENERAL.—In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in subsection (a). Before making a determination described in subsection (a)(3), the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim from the criminal proceeding. The reasons for any decision denying relief under this chapter shall be clearly stated on the record.

(2) HABEAS CORPUS PROCEEDINGS.—

(A) IN GENERAL.—In a Federal habeas corpus proceeding arising out of a State conviction, the court shall ensure that a crime victim is afforded the rights described in paragraphs (3), (4), (7), and (8) of subsection (a).

(B) ENFORCEMENT.—

(i) IN GENERAL.—These rights may be enforced by the crime victim or the crime victim's lawful representative in the manner described in paragraphs (1) and (3) of subsection (d).

(ii) MULTIPLE VICTIMS.—In a case involving multiple victims, subsection (d)(2) shall also apply.

(C) LIMITATION.—This paragraph relates to the duties of a court in relation to the rights of a crime victim in Federal habeas corpus proceedings arising out of a State conviction, and does not give rise to any obligation or requirement applicable to personnel of any agency of the Executive Branch of the Federal Government.

(D) DEFINITION.—For purposes of this paragraph, the term "crime victim" means the person against whom the State offense is committed or, if that person is killed or incapacitated, that person's family member or other lawful representative.

(c) BEST EFFORTS TO ACCORD RIGHTS.—

(1) GOVERNMENT.—Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and

accorded, the rights described in subsection (a).

(2) ADVICE OF ATTORNEY.—The prosecutor shall advise the crime victim that the crime victim can seek the advice of an attorney with respect to the rights described in subsection (a).

(3) NOTICE.—Notice of release otherwise required pursuant to this chapter shall not be given if such notice may endanger the safety of any person.

(d) ENFORCEMENT AND LIMITATIONS.—

(1) RIGHTS.—The crime victim or the crime victim's lawful representative, and the attorney for the Government may assert the rights described in subsection (a). A person accused of the crime may not obtain any form of relief under this chapter.

(2) MULTIPLE CRIME VICTIMS.—In a case where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in subsection (a), the court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings.

(3) MOTION FOR RELIEF AND WRIT OF MANDAMUS.—The rights described in subsection (a) shall be asserted in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred. The district court shall take up and decide any motion asserting a victim's right forthwith. If the district court denies the relief sought, the movant may petition the court of appeals for a writ of mandamus. The court of appeals may issue the writ on the order of a single judge pursuant to circuit rule or the Federal Rules of Appellate Procedure. The court of appeals shall take up and decide such application forthwith within 72 hours after the petition has been filed, unless the litigants, with the approval of the court, have stipulated to a different time period for consideration. In deciding such application, the court of appeals shall apply ordinary standards of appellate review. In no event shall proceedings be stayed or subject to a continuance of more than five days for purposes of enforcing this chapter. If the court of appeals denies the relief sought, the reasons for the denial shall be clearly stated on the record in a written opinion.

(4) ERROR.—In any appeal in a criminal case, the Government may assert as error the district court's denial of any crime victim's right in the proceeding to which the appeal relates.

(5) LIMITATION ON RELIEF.—In no case shall a failure to afford a right under this chapter provide grounds for a new trial. A victim may make a motion to re-open a plea or sentence only if—

(A) the victim has asserted the right to be heard before or during the proceeding at issue and such right was denied;

(B) the victim petitions the court of appeals for a writ of mandamus within 14 days; and

(C) in the case of a plea, the accused has not pled to the highest offense charged.

This paragraph does not affect the victim's right to restitution as provided in title 18, United States Code.

(6) NO CAUSE OF ACTION.—Nothing in this chapter shall be construed to authorize a cause of action for damages or to create, to enlarge, or to imply any duty or obligation to any victim or other person for the breach of which the United States or any of its officers or employees could be held liable in damages. Nothing in this chapter shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction.

(e) DEFINITIONS.—For the purposes of this chapter:

(1) COURT OF APPEALS.—The term “court of appeals” means—

(A) the United States court of appeals for the judicial district in which a defendant is being prosecuted; or

(B) for a prosecution in the Superior Court of the District of Columbia, the District of Columbia Court of Appeals.

(2) CRIME VICTIM.—

(A) IN GENERAL.—The term “crime victim” means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia.

(B) MINORS AND CERTAIN OTHER VICTIMS.—In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim's rights under this chapter, but in no event shall the defendant be named as such guardian or representative.

(3) DISTRICT COURT; COURT.—The terms “district court” and “court” include the Superior Court of the District of Columbia.

(f) PROCEDURES TO PROMOTE COMPLIANCE.—

(1) REGULATIONS.—Not later than 1 year after the date of enactment of this chapter, the Attorney General of the United States shall promulgate regulations to enforce the rights of crime victims and to ensure compliance by responsible officials with the obligations described in law respecting crime victims.

(2) CONTENTS.—The regulations promulgated under paragraph (1) shall—

(A) designate an administrative authority within the Department of Justice to receive and investigate complaints relating to the provision or violation of the rights of a crime victim;

(B) require a course of training for employees and offices of the Department of Justice that fail to comply with provisions of Federal law pertaining to the treatment of crime victims, and otherwise assist such employees and offices in responding more effectively to the needs of crime victims;

(C) contain disciplinary sanctions, including suspension or termination from employment, for employees of the Department of

Justice who willfully or wantonly fail to comply with provisions of Federal law pertaining to the treatment of crime victims; and

(D) provide that the Attorney General, or the designee of the Attorney General, shall be the final arbiter of the complaint, and that there shall be no judicial review of the final decision of the Attorney General by a complainant.

(Added Pub. L. 108-405, title I, §102(a), Oct. 30, 2004, 118 Stat. 2261; amended Pub. L. 109-248, title II, §212, July 27, 2006, 120 Stat. 616; Pub. L. 111-16, §3(12), May 7, 2009, 123 Stat. 1608; Pub. L. 114-22, title I, §113(a), (c)(1), May 29, 2015, 129 Stat. 240, 241.)

REFERENCES IN TEXT

The Federal Rules of Appellate Procedure, referred to in subsec. (d)(3), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The date of enactment of this chapter, referred to in subsec. (f)(1), is the date of enactment of Pub. L. 108-405, which was approved Oct. 30, 2004.

PRIOR PROVISIONS

A prior section 3771, acts June 25, 1948, ch. 645, 62 Stat. 846; May 24, 1949, ch. 139, §59, 63 Stat. 98; May 10, 1950, ch. 174, §1, 64 Stat. 158; July 7, 1958, Pub. L. 85-508, §12(k), 72 Stat. 348; Mar. 18, 1959, Pub. L. 86-3, §14(g), 73 Stat. 11; Oct. 17, 1968, Pub. L. 90-578, title III, §301(a)(2), 82 Stat. 1115, related to procedure to and including verdict, prior to repeal by Pub. L. 100-702, title IV, §§404(a), 407, Nov. 19, 1988, 102 Stat. 4651, 4652, effective Dec. 1, 1988.

A prior section 3772, acts June 25, 1948, ch. 645, 62 Stat. 846; May 24, 1949, ch. 139, §60, 63 Stat. 98; July 7, 1958, Pub. L. 85-508, §12(l), 72 Stat. 348; Mar. 18, 1959, Pub. L. 86-3, §14(h), 73 Stat. 11; Oct. 12, 1984, Pub. L. 98-473, title II, §206, 98 Stat. 1986, related to procedure after verdict, prior to repeal by Pub. L. 100-702, title IV, §§404(a), 407, Nov. 19, 1988, 102 Stat. 4651, 4652, effective Dec. 1, 1988.

AMENDMENTS

2015—Subsec. (a)(9), (10). Pub. L. 114-22, §113(a)(1), added pars. (9) and (10).

Subsec. (d)(3). Pub. L. 114-22, §113(c)(1), inserted “In deciding such application, the court of appeals shall apply ordinary standards of appellate review.” before “In no event shall”.

Pub. L. 114-22, §113(a)(2), inserted “, unless the litigants, with the approval of the court, have stipulated to a different time period for consideration” after “after the petition has been filed”.

Subsec. (e). Pub. L. 114-22, §113(a)(3), substituted “For the purposes of this chapter:” for “For the purposes of this chapter, the term”, designated remainder of existing provisions as par. (2) and inserted par. heading, in par. (2), inserted subpar. (A) designation, heading, and “The term” before “‘crime victim’ means” and inserted subpar. (B) designation and heading before “In the case”, and added pars. (1) and (3).

2009—Subsec. (d)(5)(B). Pub. L. 111-16 substituted “14 days” for “10 days”.

2006—Subsec. (b). Pub. L. 109-248 designated existing provisions as par. (1), inserted heading, and added par. (2).

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-22, title I, §113(c)(2), May 29, 2015, 129 Stat. 241, provided that: “The amendment made by paragraph (1) [amending this section] shall apply with respect to any petition for a writ of mandamus filed under section 3771(d)(3) of title 18, United States Code, that is pending on the date of enactment of this Act [May 29, 2015].”

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-16 effective Dec. 1, 2009, see section 7 of Pub. L. 111-16, set out as a note under section 109 of Title 11, Bankruptcy.

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108-405, title I, §101, Oct. 30, 2004, 118 Stat. 2261, provided that: "This title [enacting this chapter and sections 10603d and 10603e of Title 42, The Public Health and Welfare, repealing section 10606 of Title 42, and enacting provisions set out as a note under this section] may be cited as the 'Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act.'"

REPORTS ON ASSERTION OF CRIME VICTIMS' RIGHTS IN CRIMINAL CASES

Pub. L. 108-405, title I, §104(a), Oct. 30, 2004, 118 Stat. 2265, provided that: "Not later than 1 year after the date of enactment of this Act [Oct. 30, 2004] and annually thereafter, the Administrative Office of the United States Courts, for each Federal court, shall report to Congress the number of times that a right established in chapter 237 of title 18, United States Code, is asserted in a criminal case and the relief requested is denied and, with respect to each such denial, the reason for such denial, as well as the number of times a mandamus action is brought pursuant to chapter 237 of title 18, and the result reached."

PART III—PRISONS AND PRISONERS

Table with 2 columns: Chap. and Sec. listing sections 301 through 319 including General provisions, Bureau of Prisons, Commitment and transfer, Transfer to or from foreign countries, Employment, Repealed, Offenders with mental disease or defect, Repealed, Discharge and release payments, Institutions for women, National Institute of Corrections.

AMENDMENTS

1990—Pub. L. 101-647, title XXXV, §3597, Nov. 29, 1990, 104 Stat. 4931, added items 306 and 319. 1984—Pub. L. 98-473, title II, §218(d), Oct. 12, 1984, 98 Stat. 2027, in items 309, 311, and 314 substituted "Repealed" for "Good time allowances", "Parole", and "Narcotic addicts", respectively. Pub. L. 98-473, title II, §403(b), Oct. 12, 1984, 98 Stat. 2067, substituted "Offenders with mental disease or defect" for "Mental defectives" in item 313. 1966—Pub. L. 89-793, title VI, §603, Nov. 8, 1966, 80 Stat. 1450, added item 314.

CHAPTER 301—GENERAL PROVISIONS

Table with 2 columns: Sec. and description listing sections 4001 through 4011 including Limitation on detention; control of prisons, Federal prisoners in State institutions; employment, Federal institutions in States without appropriate facilities, Oaths and acknowledgments, Medical relief; expenses, Subsistence for prisoners, Expenses of prisoners, Transportation expenses, Appropriations for sites and buildings, Acquisition of additional land, Disposition of cash collections for meals, laundry, etc.

Table with 2 columns: Sec. and description listing sections 4012 through 4014 including Summary seizure and forfeiture of prison contraband, Support of United States prisoners in non-Federal institutions, Testing for human immunodeficiency virus.

AMENDMENTS

1998—Pub. L. 105-370, §2(b), Nov. 12, 1998, 112 Stat. 3375, added item 4014. 1988—Pub. L. 100-690, title VII, §7608(d)(2), Nov. 18, 1988, 102 Stat. 4517, added item 4013. 1984—Pub. L. 98-473, title II, §1109(e), Oct. 12, 1984, 98 Stat. 2148, added item 4012. 1971—Pub. L. 92-128, §1(c), Sept. 25, 1971, 85 Stat. 347, substituted "Limitation on detention; control of prisons" for "Control by Attorney General" in item 4001. 1966—Pub. L. 89-554, §3(e), Sept. 6, 1966, 80 Stat. 610, added items 4010 and 4011.

§ 4001. Limitation on detention; control of prisons

(a) No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress.

(b)(1) The control and management of Federal penal and correctional institutions, except military or naval institutions, shall be vested in the Attorney General, who shall promulgate rules for the government thereof, and appoint all necessary officers and employees in accordance with the civil-service laws, the Classification Act, as amended, and the applicable regulations.

(2) The Attorney General may establish and conduct industries, farms, and other activities and classify the inmates; and provide for their proper government, discipline, treatment, care, rehabilitation, and reformation.

(June 25, 1948, ch. 645, 62 Stat. 847; Pub. L. 92-128, §1(a), (b), Sept. 25, 1971, 85 Stat. 347.)

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1934 ed., §§741 and 753e (Mar. 3, 1891, ch. 529, §§1, 4, 26 Stat. 839; May 14, 1930, ch. 274, §6, 46 Stat. 326).

This section consolidates said sections 741 and 753e with such changes of language as were necessary to effect consolidation.

"The Classification Act, as amended," was inserted more clearly to express the existing procedure for appointment of officers and employees as noted in letter of the Director of Bureau of Prisons, June 19, 1944.

REFERENCES IN TEXT

The Classification Act, as amended, referred to in subsec. (b)(1), originally was the Classification Act of 1923, Mar. 4, 1923, ch. 265, 42 Stat. 1488, which was repealed by section 1202 of the Classification Act of 1949, Oct. 28, 1949, ch. 782, 63 Stat. 972. Section 1106(a) of the 1949 Act provided that references in other laws to the Classification Act of 1923 shall be held and considered to mean the Classification Act of 1949. The Classification Act of 1949 was in turn repealed by Pub. L. 89-554, §8(a), Sept. 6, 1966, 80 Stat. 632, and reenacted by the first section thereof as chapter 51 and subchapter III of chapter 53 of Title 5.

AMENDMENTS

1971—Pub. L. 92-128, §1(b), substituted "Limitation on detention; control of prisons" for "Control by Attorney General" in section catchline.

Subsec. (a). Pub. L. 92-128, §1(a), added subsec. (a). Subsec. (b). Pub. L. 92-128, §1(a), designated existing first and second pars. as pars. (1) and (2) of subsec. (b).

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-294, §1, Oct. 12, 2000, 114 Stat. 1038, provided that: "This Act [enacting section 4048 of this title